***THE HON'BLE SRI JUSTICE P.S.NARAYANA**

+W.P.No.16618 of 2007

% 20-11-2007

K.Ravinchandra Reddy and others .. Petitioners

And

$ Government of A.P.
Revenue (Endowments-II) Department
Represented by its Principal Secretary,
Secretariat Buildings, Hyderabad
and others .. Respondents

<GIST:

>HEAD NOTE :

! Counsel for petitioners : Sri M.S. Prasad

? Counsel for respondents : G.P. for Endowments
for R-4 : Sri V.T.M. Prasad
for R-6 : Sri Subba Reddy

?CASES REFERRED :

1 (1996) 4 SCC 17
2 (1997) 4 SCC 1
3 AIR 1963 S.C., 1313
4 AIR 1966 S.C., 282
5 AIR 1965 Punjab 433
6 1965 (1) MLJ, 137
7 1956 (2) MLJ, 194
8 1965 (2) AWR 423
9 1966 (2) MLJ, 431
10 1964 (2) MLJ, 426

11 AIR 1966 Punjab 393 (at Delhi)
12 AIR 1959 Allahabad 71
13 AIR 1994 Punjab & Haryana 242
14 AIR 1957 Rajasthan 27
15 1996 (4) SCC 17
16 1997 (4) SCC 1

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Between :

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And

Government of A.P.
Revenue (Endowments-II) Department
Represented by its Principal Secretary,
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and others .. Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.16618 of 2007

ORDER:-

1. K.Ravichandra Reddy and 16 others filed the present Writ Petition for a Writ of Mandamus declaring the proceedings of the 1st respondent in G.O.Rt.No.1515, dt.16-7-2007 as illegal, null, void and opposed to Section 19(e) of Act 30 of 1987 insofar as it relates to 6th respondent herein and pass such other suitable orders. The 6th respondent is one M.Jagannadha Reddy.

2. This Court issued *rule nisi* on 6-8-2007 and granted interim order for a limited period in W.P.M.P.No.21166/2007 and subsequent thereto on 21-

8-2007 the interim order granted earlier was extended until further orders.

3. The 4th respondent – Sri Swayambu Sri Varasiddhi Vinayaka Swamy Temple, Kanipakam, filed W.V.M.P.No.2308/2007 to vacate the interim order. Likewise, the 6th respondent filed W.V.M.P.No.2077/2007 to vacate the interim order. Counter affidavits are filed by R.1, R.2 and a common reply affidavit also was filed by the writ petitioners.

4. The learned Counsel on record made elaborate submissions and at the request of the Counsel, the Writ Petition itself had been taken up for final hearing.

5. **Contentions of Sri M.S.Prasad:-** Sri M.S.Prasad, the learned Counsel representing the writ petitioners had taken this Court through G.O.Rt.No.1515, dt.16-7-2007 and would maintain that the said impugned order issued by the 1st respondent so far as it relates to the 6th respondent is concerned, being opposed to Section 19(1)(e) of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (hereinafter, in short, would be referred to 'the Act' for the purpose of convenience) is invalid. The Counsel also would maintain that inspite of the representation made by petitioners 2 and 17 by furnishing the various Judgments showing the

conviction and confirmation thereof of the 6th respondent and despite the fact that the said offence is an offence involving *moral turpitude*, the 1st respondent proceeded to issue the impugned G.O., and hence the same cannot be sustained. The learned Counsel made elaborate submissions on the aspect of the scope, ambit and definition of the expression “moral turpitude” and also further had taken this Court through the relevant provisions of the Act and the Rules framed thereunder and would maintain that an offence of kidnapping from lawful guardianship would definitely be an offence involving *moral turpitude* and hence the Writ Petition to be allowed. The learned Counsel also pointed out that the counter affidavits filed by R.1 and R.2 would go to show that despite the fact that the 6th respondent incurs disqualification, somehow or other, the official respondents are interested to see that the 6th respondent is continued instead of taking appropriate steps in this regard to rectify the grave illegality committed by them. The learned Counsel also would comment that even without verifying the antecedents properly, the concerned authorities had further proceeded with the matter. The learned Counsel also had taken this Court through Sections 18, 19 and 28 of the Act and would comment

that inasmuch as *rule nisi* had been issued, the question of driving the writ petitioners to an alternative remedy normally would not arise. Even otherwise, the learned Counsel would maintain that this is not a case of subsequent disqualification after appointment, but a disqualification which was incurred by the 6th respondent long prior to the appointment and which, in fact, was brought to the notice of the concerned authorities inclusive of the Minister concerned by making due representations. The learned Counsel also had taken this Court through the contents of the representations in this regard. The learned Counsel also would maintain that instead of giving an effect to the Legislative intent, the authorities are trying to explain the situation so as to convince this Court that the rigor of the offence with which R.6 had been charged in a way had been watered down by the Apex Court. This approach adopted cannot be sustained. While further elaborating his submissions, the learned Counsel also had taken this Court through Sections 149 and 153 of the Act and the relevant Rules framed in relation to Section 28 of the Act. When the facts are not in dispute, to contend that this involves mixed questions of fact and mixed questions of law and further enquiry would be necessary, cannot be a sustainable

contention. The learned Counsel also would maintain that the long lapse of time also cannot be taken advantage of by the 6th respondent since that is not the Legislative intent. The learned Counsel also commented that there are some Legislations where after a particular period such disqualification would cease, but when the provision is clear and categorical, what is not there in the provision cannot be read into and the provision as such may have to be given effect to and if the Legislative wisdom thinks otherwise to bring in suitable amendment in this regard, it is left to the Legislative will and it is not for the Courts and when once this Court is satisfied that the provisions relating to disqualification is applicable to the 6th respondent, it may have to be declared that the appointment of the 6th respondent by the impugned G.O., is invalid and the same to be quashed. The learned Counsel also placed strong reliance on certain definitions in relation to *moral turpitude* in certain of the Dictionaries and the like.

6. **Contentions of the learned Government Pleader for Endowments:-** The learned Government Pleader for Endowments had taken this Court through Section 19(1)(e) of the Act and would maintain that the expression *moral turpitude* had not been defined under

the Act and hence, the Dictionary meaning of the same may have to be looked into. The learned Government Pleader also would submit that while deciding whether an offence would fall under the category involving *moral turpitude,* the gravity of the offence or seriousness of the charge may not be relevant, but facts of the case may have to be looked into. The learned Government Pleader for Endowments also had taken this Court through the relevant portions of the counter affidavits of R.1 and R.2 as well and also had pointed out to certain portions of the counter affidavit of R.4 as well. The learned Government Pleader for Endowments also further pointed out the relevant portions of the findings recorded by different Courts inclusive of the Apex Court and would maintain that from the very tenor of the order made by the Apex Court, it is clear that the offence would not fall under the moral turpitude at all. The learned Government Pleader would maintain that the moral standards also change with the changing society and no hard and fast rule can be laid down in this regard. The learned Government Pleader also relied upon ***PAWAN KUMAR v. STATE OF HARYANA AND ANOTHER***[1] and ***ALLAHABAD BANK AND ANOTHER v. DEEPAK KUMAR BHOLD***[2]***.***

7. **Contentions of Sri V.T.M.Prasad:-** Sri

V.T.M.Prasad, the learned standing Counsel representing R.4 would maintain that these writ petitioners have no *locus standi* at all to maintain the present Writ Petition and the Writ Petition is not a *bona fide* one. Further, these writ petitioners have no interest in the institution or the welfare of the institution. The learned standing Counsel also would contend that certain of the writ petitioners booked as accused along with R.6 in the episode of kidnapping, such parties coming before this Court would reflect the malafide intention and lack of bona fides. The learned standing Counsel also had taken this Court through the counter affidavits and would maintain that in the facts and circumstances of the case, the impugned order not to be interfered with.

8. **Contentions of Sri Subba Reddy:-** Sri Subba Reddy, the learned senior Counsel representing R.6 would submit that the 1st and 3rd writ petitioners also figure as accused in the prior criminal proceedings along with R.6 as well. These are all close relatives and because of the differences, unnecessarily, this litigation had been thought of though there is sufficient long lapse of time. The learned senior Counsel also would submit that certified copies of the Judgments had not been produced by the Assistant Commissioner, but some Xerox

copies had been submitted and in the light of the same, the proceedings of the Assistant Commissioner cannot be found fault. The learned senior Counsel also would submit that there was no proper material placed before the Government to arrive at a particular conclusion and even otherwise, when once appointment had been made, there is no question of a Writ Court disqualifying such Trustee or Chairman, as the case may be, straightaway, and the procedure as contemplated by Section 28 of the Act and the Rules framed there-under, may have to be followed. In other words, the learned senior Counsel would maintain that unless and until the procedure as ordained by the statutory provisions and the Rules framed there-under had been followed, there is no question of straightaway disqualifying the 6th respondent in a proceeding under Article 226 of the Constitution of India. The learned senior Counsel also would submit that the concept of *moral turpitude* may have to be understood in the social context, especially, in the light of the present era of globalization. The learned senior Counsel also pointed out that the concept of *moral turpitude* may have to be understood in the context of the Society and what a prudent man may think of a particular episode. Here is a case where there was some dispute relating to forcible marriage in between

the relatives and though it had resulted in conviction which ultimately had been confirmed with some modification by the Apex Court, the observations made by the Apex Court would go to show that the same ended in a happy marital tie and this aspect also to be taken into consideration and if the facts are carefully analyzed, the stand taken by the writ petitioners that the 6th respondent to be disqualified on that ground, cannot be a sustainable ground. The learned senior Counsel further made several elaborate submissions making certain Pouranik references also in this regard.

9. Heard the Counsel, perused the pleadings of the parties and also the records produced by the learned Government Pleader for Endowments and the records relied upon by the parties.

10. At the outset it may be appropriate to have a look at G.O.Rt.No.1515, dt.16-7-2007, which reads as hereunder:-

GOVERNMENT OFANDHRA PRADESH
ABSTRACT

Endowments Department – Chittoor District – Sri Swayambu Sri Varasiddhi Vinayaka Swamy Temple, Kanipakam, Chittoor – Constitution of Trust Board – Orders – Issued.

REVENUE (ENDTS.II) DEPARTMENT

G.O.Rt.No.1515 *Dated:16-7-2007*

Read the following

1. G.O.Rt.No.618, Rev.(Endts.II) Department, dt.24-3-2007
2. From the CED, Hyderabad Lr.No.H3/13904/2007, dt.5-7-2004.

ORDER:

In exercise of the powers conferred by clause (a) of the sub-Section (1) of the Section 15 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (Act 30/87) read with amended Act 29/2000, the Government of Andhra Pradesh hereby constitute a Board of Trustees to Sri Swayambu Sri Varasiddhi Vinayaka Swamy Temple, Kanipakam, Chittoor with the following members:

1. Sri Manipi Jagannadha Reddy, S/o.Ramakrishna Reddy
2. Sri Challagundla Ramurthy Naidu, S/o. Lingam Naidu
3. Sri Galla Satyanarayana, S/o.Ramanadaiah
4. Sri Nallapothula Praveen, S/o.Soundaraja Naidu
5. Smt.Mannavara Sreevalli, W/o.N.R.Jayadeva Naidu
6. Sri Laxmaiah Srihari, S/o.Lakshmaiah
7. Sri Poojari Gangulaiah, S/o.P.Abbai
8. Sri Velkuru Muniratnam Reddy, S/o.Rami Reddy
9. Sri Kasuchetty Venkateswara Prasad, S/o.K.R.Venkatesulu

2. The above Trustees shall hold the office for a period of two (2) years with effect from the date of taking of oath of office and secrecy.

3. The Commissioner of Endowments, Hyderabad

shall take steps to administer the oath of office and secrecy to the persons appointed as Trustees in para (1) above and also election of the Chairman to the above Trust Board as per the provisions of Section (20) of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (Act 30/87) and the Rules made thereunder.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

I.V.SUBBA RAO

PRINCIPAL SECRETARY TO GOVERNMENT.

Further it may be appropriate to have a look at Rc.No.b3/1320/2007 Adm., dt.1-6-2007 of the Office of the Assistant Commissioner, Endowments Department, Chittoor, and the same reads as hereunder:-

Office of the Assistant Commissioner,
Endowments Department, Chittoor

Rc.No.B3/1320/2007 Adm., Dt.1-6-2007

Sub:- Endowments Department – Constitution of Trust Board to Sri Swayambu Varasiddi Vinayaka Swamy Temple, Kanipaka (v), Irala (m), Chittoor District – Criminal record and particulars of M.Jagannadha Reddy, S/o.Rama Krishna Reddy, resident of Kanipakam – request not to appoint him as Member of Chairman of Trust Board – certain information called for.

Ref:- Lt.Dt.9-4-2007 from Sri G.Muna Swamy Naidu, Kakarlavaripalle and Sri L.Gopinath,

Ex-Sarpanch, Kanipakam.

-: o0o :-

The attention of Sri G.Muna Swamy Naidu, Kakarlavaripalle (v) and Sri L.Gopinath, Ex-Sarpanch, Kanipakam are invited to the reference cited and they are requested to furnish the copies of Judgment order dt.23-9-1987 in S.C.No.104/86 on the file of Asst. Sessions Judge Court, Chittoor and Judgment dt.21-4-1998 in Crl.A.No.91/1987 on the file of District Sessions Judge at Chittoor, High Court Judgment dt.6-3-1995 in Crl.A.No.332/95 on the file of Hon'ble Supreme Court of India and also copy of FIR No.34/2007 on the file of Irala Police Station to this office immediately for verification and for taking further action of the subject matter.

Sd/-
Assistant Commissioner (FAC)

The representation made by 2nd and 17th writ petitioners dt.9-4-2007 and also the relevant Judgments of the prior criminal proceedings also had been placed before this Court. It may also be appropriate to have a glance at the Judgment made by the Apex Court and the same reads as hereunder:-

IN THE SUPREME COURT OF INDIA
CRIMINAL APPEELLATE JURISDICTION
CRIMINAL APPEAL No.332 OF 1995
Arising out of
SPECIAL LEAVE PETITION (CRL) No.1022 of 1989
Poornachandra Reddy & Ors. .. Appellants
Versus

State of Andhra Pradesh .. Respondents

O R D E R

Leave granted.

We have heard learned Counsel for the parties.

We do not find any reason to interfere with the order of conviction recorded by the Courts below. Affidavits have been filed both by appellant No.8 as well as the prosecutrix and their parents. According to those affidavits, the parties are closely related and the prosecutrix and the appellant No.8 have since got married and their marriage is subsisting. Keeping in view all these factors, we consider it appropriate to reduce the substantive sentence imposed upon the appellants except A.4 and A.6, whose sentence was reduced by the High Court itself, to the period already undergone by them. The appeal is, therefore, allowed to the limited extent that the substantive sentence of imprisonment imposed by the High Court on appellants A.1, A.2, A.3, A.5, A.7 and A.8 is reduced to the period already undergone by them. The appellants shall be released from custody forthwith, if not required in any other case.

Sd/-
(A.S.ANAND)
Sd/-
M.VENKATACHALA

New Delhi

6th March, 1995

11. The Writ Petition was filed by 17 writ petitioners and the affidavit filed in support of the Writ Petition was sworn to by the 17th writ petitioner. It is stated that *all the writ*

petitioners are local residents of Kanipakam village and surrounding villages and the petitioners are the devotees of the 4th respondent and contributing lot of services and interested in the welfare of the Temple in order to develop the institution Temple since most of the petitioners' family have been rendering services to the Temple from decades together even when the Temple was not taken over by the Endowments Department. It is also stated that there is no individual interest or individual cause of action and this Writ Petition is being filed with common interest to protect and safe-guard the interest of the Temple and the petitioners will not get any individual benefit, but in the interest of the 4th respondent Temple, which is common cause, the petitioners were forced to file this Writ Petition.

Further it is averred that for the development of the 4th respondent Temple, the petitioners 1 to 3 and 5 have parted with their valuable lands in Land Acquisition proceedings at a lower price than the market rate and further their families are permanent Ubhayadarulu to the Temple. It is also stated that the other petitioners being villagers of Kanipakam and other nearby villages are also Ubhayadarulu of various Vahanam on caste basis. It is further stated that the 4th respondent Temple was constructed and developed by the local villagers of

Kanipakam and adjacent villages. It is also stated that the forefathers of the petitioners have also contributed certain funds and rendered voluntary services for its development and that the petitioners are worshipping the God and rendering their services voluntarily as and when required and as such they are interested in the welfare of the Temple. It is also averred that in fact, some of the petitioners have brought to the notice of the higher officials about the irregularities committed by certain officers and previous trust board and that the higher officials of the Endowments Department have taken prompt action and rectified the irregularities. Further it is also stated that the 16th petitioner donated Adhikara Nandhi Vahanam by spending Rs.1,20,000/- from his own earnings and the said Vahanam being used during Brahmotsavam period every year. It is further stated that the father of the 2nd petitioner and his uncles have donated valuable pieces of land adjacent to the Temple and they constructed compound wall to the Temple and a big chowltry which was handed over to the Temple along with some valuable land on free of cost by the 2nd petitioner and the Temple is getting more than Rs.1,30,000/- at present as rent for the shops raised in the said land. It is also averred that the 1st respondent issued G.O.Rt.No.618, dt.26-3-2007 inviting

applications from the interested persons for the constitution of Trust Board to the 4th respondent and knowing that the 6th respondent has applied for becoming member of the Trust Board and Chairman in response to the above notification and that the 2nd petitioner and this 17th petitioner had sent a detailed representation dt.9-4-2007 along with four Court Judgments and FIR Copy to the Hon'ble Minister for Endowments and respondents 1 to 3 through registered post against 6th respondent and all of them received the said representation. It is also averred that in the said representation, they have requested them not to appoint 6th respondent as Member of Trust Board or Chairman of the Trust Board to 4th respondent Temple by narrating the following facts:-

a) *That the 6th respondent was 3rd accused in Crime No.19/1982 on the file of Puthalapattu P.S., under Sections 366 IPC (kidnapping, abducting or inducing women to compel her marriage), 392 IPC (Punishment for Robbery), read with 109 IPC (Punishment for abetment) and charge sheet is filed before Assistant Sessions Court, Chittoor. The above crime is numbered as S.C.No.104/86.*

After full fledged trial, the 6th respondent and

others were convicted and sentenced with rigorous imprisonment for a period of 3 years on two counts i.e., under Section 366 r/which 109 IPC and under Section 420 IPC vide Judgment dt.23-9-1987.

b) *Against the above said conviction, the 6th respondent and others have filed Criminal Appeal No.91/87 on the file of Sessions Judge, Chittoor and the appellate Court in its Judgment dt.21-4-1988 confirmed the conviction given under Section 366 IPC.*

c) *The 6th respondent and other accused have approached the Hon'ble High Court by filing Criminal R.C.No.182/88 against the conviction confirmed by the Appellate Court and this Hon'ble Court confirmed the conviction and reduced the sentence as rigorous imprisonment for a period of one year on 19-4-1989.*

d) *The 6th respondent filed SLP (Criminal) No.1022/1989 before the Hon'ble Supreme Court and the same was numbered as Criminal Appeal and ultimately the Hon'ble Supreme Court in its Judgment dt.6-3-1995 reduced the period of sentence to the period already undergone by*

him. The conviction was not reversed and as such the 6th respondent had undergone sentence imposed by the criminal Court for the offence under Section 366 IPC which is a crime against women and the said offence involving moral turpitude and the conviction and sentence not reversed by the Courts. Therefore, the 6th respondent is disqualified under Section 19(3) of the Endowment Act, 1987 and he cannot be appointed as Member of Trust Board or Chairman of the Trust Board in the interest of the Temple in view of the disqualification.

e) Further, a case is registered at Irala P.S., vide FIR No.34/2007 dt.1-4-2007 against 6th respondent and others under Section 3(1)(x) of SC & ST (POA)Act 1989 and 506 IPC on a complaint given by Scheduled Caste Woman Sarpanch of Kanipakam Gram Panchayat.

It is further averred in para 5 of the affidavit filed in support of the Writ Petition that inspite of bringing the above said facts to the notice of respondents 1 to 3, the 1st respondent issued G.O.Rt.No.1515 dt.16-7-2007 constituting Board of Trustees to 4th respondent Temple in which the 6th respondent is the first person among the

nine persons and he was elected as Chairman to the Trust Board. It is also further stated that the appointment of the 6th respondent as Trustee and Chairman of the Trust Board is clear contravention of the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987. Further it is stated that the intention of the Legislature is very clear that persons having criminal record or involved in criminal cases for an offence involving moral turpitude cannot be considered in the interest and management of the Temples. Section 19 of the Act 30 of 1987 deals with disqualification for Trusteeship and the 6th respondent is disqualified under Section 19(1)(e) of the said Act. It is also stated that if the management of the Temple is entrusted to such a person, the Sanctity and reputation of the Temple will be damaged since it is clear violation of the Act and prescribed norms. It is also averred that the 3rd petitioner herein also accused in the above said criminal case along with 6th respondent and they have also suffered the conviction and sentence and in fact, 3rd petitioner herein could not get VAO Post on that ground alone though he worked as V.M. earlier. Further it is also averred that on the representation dt.9-4-2007, the 3rd

respondent in his proceedings in Rc.No.B3/1320/07, dt.1-6-2007 requested them to furnish the copies of all Judgments and also FIR No.34 of 2007 on the file of Irala P.S., for verification and taking further action on the subject matter and that they submitted all the four Judgments and FIR Copy in Crime No.34/2007 to R.3 on 5-6-2007 and received acknowledgement to that effect. Further it is stated that inspite of the above said fact, the petitioners came to know that the 3rd respondent recommended the name of 6th respondent to 2nd respondent for appointment as Trustee of the 4th respondent Temple and the 2nd respondent in turn recommended the same mechanically to the 1st respondent and the 1st respondent issued the impugned order on political considerations without considering the material submitted by the petitioners. It is further stated that the petitioners came to know that the 5th respondent had given a letter saying that there are no cases pending against 6th respondent and he is not convicted in any case and basing on the above said letter, the respondents 1 to 3 processed the application of 6th respondent and appointed him as Trustee of the Temple and allowed him to become the Chairman of the Trust Board in

contravention of Endowment Act 1987. Further it was also averred that recently also a crime is registered as FIR No.64, dt.3-7-2007 against 6th respondent and 2 others under Sections436, 323 IPC and under Section 3(1)(x) of SCs & STs (POA)Act 1989. It is also further stated that at the instance of 6th respondent, the respondent No.5 has foisted number of false cases against some of the petitioners and others in order to terrorize them and make them silent for getting higher position by the 6th respondent. It is also stated that the District Collector in his Rc.No.3580/06 A4 (P), dt.28-6-2007 directed the S.H.O., Irala P.S., to register criminal case against R.6 and others for misusing 32 iron pipes of Kanipakam Gram Panchayat and inspite of that, the 5th respondent had not registered any case and not recovered the pipes from the 6th respondent and others. Certain averments were made relating to political interference as well and the politicians influencing the concerned officials.

12. Counter affidavits of 1st respondent and 2nd respondent are almost on similar lines. The counter affidavit on behalf of the 2nd respondent was sworn to by V.Veerendra Varma, The Deputy Commissioner of Endowments Department, Boggulakunta, Hyderabad.

Counter affidavit of 1st respondent was sworn to by I.V.Subba Rao, the Principal Secretary to Government, Revenue (Endowments) Department, Hyderabad. Since both the counter affidavits almost are on the same lines, it may be appropriate to have a look at the counter affidavit filed by the 1st respondent. It is averred in para 3 that *it is true that the Government had called for the applications for constituting the Trust Board and the 6th respondent applied for being appointed as Member of Trust Board. It is also stated that the Government had called for the report of the Assistant Commissioner, Endowments Department, Chittoor and that the Assistant Commissioner, Endowments Department, Chittoor got a report from the Inspector of Police and reported that there are no criminal cases pending against the 6th respondent. It is also averred that the petitioners had not submitted certified copies of the Judgments of the Criminal Courts to the Assistant Commissioner. Further it is averred that after getting the report from Assistant Commissioner, Endowments Department, Chittoor and after obtaining information and report from the concerned and after following the procedure, the 1st respondent issued G.O.Rt.No.1515, dt.16-7-2007, constituting the Board of Trustees to the 4th respondent Temple and the*

6th respondent was also appointed as Member of the Trust Board. Further it is stated that there was a meeting of the 9 members appointed as Trustees on 20-7-2007 and the Assistant Commissioner, Endowments Department, Chittoor administered the oath of office and secrecy to them and that the meeting of the Trustees was conducted on 1-8-2007 and the other 8 Trustees elected R.6 as Chairman of the Trust Board and thus, the order of the Government was implemented and the 6th respondent has been acting as Chairman of the Trust Board and that in view of the interim direction of this Court dt.6-8-2007 he is not able to function as Chairman of Trust Board. It is also further stated that the graveness of the charge against the 6th respondent is that he assisted one B.Jayachandra Reddy in abducting a girl by name Chittemma for performing her marriage with Jayachandra Reddy and besides R.6, there were 17 more accused in the said criminal case and petitioners 1 and 3 were also accused in the said case. The object of these 18 persons taking a girl by name Chittemma to a Temple is to perform her marriage with Jayachandra Reddy, one of the accused, and the said marriage took place and was also consummated in a Hotel at Bangalore. It is also stated that though there is no direct allegation against the 6th

respondent, he was convicted along with others for the offence u/s.366 IPC. It is also stated that the 6th respondent was acquitted of the charge of robbery but convicted for an offence under Section 420 IPC by the Assistant Sessions Judge, Chittoor in S.C.No.104/86 on 23-9-1987. The Sessions Judge, Chittoor on 21-4-1988 in Crl.Appeal No.91/87 confirmed the conviction under Section 366 IPC but acquitted the 6th respondent under Section 420 IPC. It is also stated that though the Additional Assistant Judge and Sessions Judge sentenced the 6th respondent to undergo imprisonment for a period of 3 years under Section 366 IPC, it was reduced to one year imprisonment by this Court on 19-4-1989 in Criminal Revision No.182/88 and further it is stated that the said sentence was further reduced to the period of sentence already undergone by the Hon'ble Supreme Court on 6-3-1995 in Criminal Appeal No.332/95. It is also further stated that there is no moral turpitude in the allegation made against the 6th respondent as he was not the main accused in the case and he was only said to have been helped others in performing the marriage of Chittemma with Jayachandra Reddy. It is also further stated that Jayachandra Reddy and Chittemma are close relatives and they underwent a

valid and legal marriage ceremony voluntarily and they are living as husband and wife and the same was brought to the notice of the Hon'ble Supreme Court and the Hon'ble Supreme Court was pleased to reduce the sentence of the 6th respondent to the period already undergone by him. It is also further stated that the said offence had taken place as long back as on 23-10-1982 and a period of 25 years had lapsed since then and the 6th respondent was in jail for a sufficient time for his misdeed and he cannot be penalized again after 25 years by disqualifying him from being appointed as Trustee of the Temple. It is also averred that the Inspector of Police reported to the Assistant Commissioner, Endowments Department, Chittoor that there are no cases pending against the 6th respondent establishes that he is maintaining good conduct and respect in the society. It is stated that in his report dt.24-6-2007 the Assistant Commissioner stated that no criminal case is pending against the 6th respondent in Irala P.S. Further it is stated that there is no Police Station in Kanipakam village and at present this village is in the limits of Irala Police Station and hence the registration of the case under Section 3(1) (x) of SC & ST (POA) Act 1989 is not correct. Further it is stated that the Government called for applications,

received the applications, got the antecedents of the applicants, verified departmentally, got the truth or otherwise of the allegations made against the respondent verified, secured reports from the concerned officers, considered the objections and then appointed 9 Trustees including the 6th respondent and that there is no irregularity or illegality in the appointment and the appointment made by the Government is not void.

13. As already stated above, the counter affidavit filed by the 2nd respondent also is on similar lines.

14. In the counter affidavit filed by the 4th respondent, which was sworn to by the Executive Officer & Regional Joint Commissioner, Sri Varasiddhi Vinayaka Swamy vari Devasthanam, Kanipakam, Irala Mandal, Chittoor District, in para 3 it is averred that *the petitioners herein are devotees of the 4th respondent and contributing lot of service and are interested in the welfare of the Temple, and in order to develop the institution Temple, since most of the petitioners' families have rendered services to the Temple from decades together even when the Temple was not taken over by the Endowments Department and that there is no individual interest or individual cause of action and this Writ Petition is being filed with common interest to protect and safeguard the interest of the*

Temple and the petitioners will not get any individual benefit, but in the interest of the 4th respondent Temple, which is a common case of the petitioners were forced to file this Writ Petition are false and concocted for the purpose of filing the present Writ Petition. Further it is stated that the petitioners 1 to 3 and 5 have protested the land acquisition proceedings to the maximum extent possible, as such they have no right to plead that they parted with their valuable lands at lower price and that their families are permanent Ubhayadarulu cannot be sustained in view of Section 16 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987. It is also stated that the remaining allegations in para 3 are false. It is further averred that 16th petitioner is a henchman under the 1st petitioner. It is also averred that all the adjacent lands situated around the Temple are either purchased by this respondent for valuable consideration or acquired by duly following the procedure contemplated under the Land Acquisition Act and as such donation of the land by the petitioners does not arise at all and they have not donated any land. Further it is stated that the petitioners 1 to 13 are accused in a case wherein they are facing trial for the offences punishable under Section 3(1)(x) of SC & ST

(Prevention of Atrocities) Act, 1989 and other Sections, which was on a complaint given by the Executive Officer of the respondent Temple. It is further averred that previously also there are several complaints filed against them by the Temple authorities before the Station House Officer, Irala, for the highhanded behaviour on the Temple employees and officers and this fact shows the petitioners' violent disposition against the Temple and its employees. Further it is averred that petitioners 4 and 14 are due and payable huge amounts to the Temple and the Temple filed suits for recovery. It is also averred that the 14th petitioner has filed suits and Writ Petitions against the Temple and even this Court has held that the 14th petitioner herein has filed the Writ Petition on mere apprehension and dismissed the Writ Petition and that not satisfied with the directions given by this Hon'ble Court, the 14th petitioner herein has filed O.S.No.844/2005 against this respondent with all false allegations for the same relief as claimed in the Writ Petition. It is also stated that the 17th petitioner has not left any official of the Temple, Panchayat, Sarpanchas of Panchayat, Politicians, MLA's etc., in making wild and unparliamentary allegations against them and he used to print several pamphlets on several persons and even he

has made allegation against Sri Sri Kanchi Kamakoti Peethadipathi also, with his wild allegations when the Swamiji visited Temple. Further it is averred that the 17th petitioner herein has given false evidence against the Temple in several cases and he along with 2 others had filed a suit O.S.No.334/2006 on the file of Additional Senior Civil Judge, Chittoor alleging that the Temple is grabbing the lands around the Temple and he has also printed and issued pamphlets mainly alleging against the Executive Officer and employees of the Temple as "Bhubakasurulu" for the land acquisition proceedings initiated by the Government to acquire the lands in order to provide additional amenities to the thousands of pilgrims visiting daily to this respondent Temple. It is further stated that the petitioners are supporters of the 17th petitioner who has no regard to law and order and who figured as accused in more than five cases and have no interest at all in developing the Temple and on the other hand, they are creating several obstructions to the Temple in developmental activities either by pamphlets, dharnas and also defaming the employees in Newspapers and threatening them with dire consequences or riling baseless suits against the Temple. Further it is stated that the petitioners have no interest whatsoever in the welfare

of the Temple and the petitioners have no locus standi to maintain the Writ Petition.

15. The 5th respondent had not filed any counter affidavit and the 5th respondent is the Circle Inspector of Police, Pakala Circle, Pakala, Chittoor District.

16. 6th respondent had taken a stand that *the petitioners had come to Court with unclean hands and it is also stated that the 1st and 3rd petitioners are accused in S.C.No.104/86 and this respondent also had taken a stand that this respondent reserves his right to rile appropriate reply before the proper authorities as contemplated by Section 28 of the Act, when an enquiry is taken up with regard to the facts alleged. Further stand had been taken that it is significant to note that even the writ petitioners do not say that the alleged offence is an offence, resulting in moral turpitude. Further it is stated that the family of this respondent is also a devotee of 4th respondent Temple and contributing a lot to the development of the Temple for the last several decades and his family is also Ubhayadars of Theppotsavam of the Temple and they have been contributing much for the development of the Temple as MPTC of Kanipakam village as Mandal Vice President of Irala Mandal in the last term. Further it is stated that this respondent did not*

involve in any crime since 1989 after the above referred case and after coming to know that he will be made as a Trustee of the Temple, the petitioners have tried to foist false cases against him with a view to debar him from holding the post of Trustee in the recent past and this very much proved to be false on enquiry by the Police. In the counter affidavit Section 28(1)(e) of the Act also had been relied upon. Further it is stated that the Rules framed under Section 149 read with 153 of the Act as per G.O.Ms.No.651 Revenue (Endowment-I), dt.30-6-1989 are clearly applicable to the proceedings under Section 28 of the Act. Rule 3 and Rule 17 had been referred to. It is also stated that since the procedure as contemplated under Code of Civil Procedure and the procedure as ordained by the statute and the Rules are giving due opportunity and the enquiry being held, unless these are followed, straight away the jurisdiction of this Court under Article 226 of the Constitution of India cannot be invoked and the filing of the present Writ Petition is misuse of process of law and such circumvention is impermissible. Further specific stand had been taken that whether the findings would fall under the category of moral turpitude is a mixed question of fact and law. It is also further stated that when the statute provides for due opportunity and

affording due process of an enquiry to arrive at a finding, which is a mixed question of fact and law, cannot be decided adhoc on the basis of self-serving affidavit of persons, who are inimically disposed on political lines. In fact, if an Enquiry Officer conducts proceedings in a manner, which is contrary to the Rules of natural justice, such is a circumstance where the Court can interdict under Article 226 of the Constitution of India. However, by way of proceedings under Article 226 of the Constitution of India without reasonable opportunity as provided by the statute and rules there under, the 6th respondent cannot be stymied by way of an ad hoc writ, circumventing the statutory provision of enquiry which is not contemplated to be followed under Article 226 of the Constitution. It is also further stated that it is well established that even where there is no specific provision in a statute or rules made there under for showing cause against the action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority, which has the power to take punitive or damaging action. It is also further stated that in this case since the statute itself has provided such opportunity being accorded and the

procedure is also prescribed by way of rules under the rule making power given under Section 149 r/w. Section 153 as per G.O.Ms.No.651 Revenue (Endowment-I) dt.30-6-1989, it is clear that the present exercise of invoking the jurisdiction of this Hon'ble Court and obtaining interim order, which can be granted by the authority contemplated under Section 28(3) of the Act, is only to be mentioned to request this Hon'ble Court to revoke its interim order in W.P.M.P.No.21166/2007, suspending this respondent to act as Managing Trustee, ignoring the procedure and the authority under the Act, who is also bestowed with such power. Further it is stated that the authority contemplated under Section 28 read with Rules, should make an enquiry on the basis of the material placed before it and should come to a conclusion whether the alleged offence and the alleged involvement in the same amounts to moral turpitude or not and such enquiry is subject to the satisfaction of the authority contemplated under Law, which cannot be ignored and/or usurped by exercising power under Article 226 of the Constitution of India. Further specific stand had been taken that the question whether 6th respondent was first sentenced for an offence involving moral turpitude may have to be decided after due enquiry as a question of

fact. Further it is stated that it is not the law of the land that if a crime is committed, the individual is debarred from holding the post for ever. The authority has got a discretion to consider all the facts and circumstances in a particular situation and decide whether the person concerned is debarred from holding the post or not. It is also stated that from the above facts, the petition is to be dismissed on the grounds, firstly, that the petitioners have got an alternative remedy under Section 28 of the Act, secondly, the petitioners cannot approach this Hon'ble Court and it is always open to raise all the objections before the authority concerned and the authority can adjudicate the same and thirdly, the Judgment of the Supreme Court clearly discloses the facts and circumstances leading to the crime and the concerned authority has got a discretion to continue the 6th respondent as a Trustee.

17. A common reply affidavit was filed in detail sworn to by the 17th petitioner. It is stated in para 2 of the reply affidavit that *with regard to the counter filed by one Mr.B.Veerender Varma, Deputy Commissioner of Endowments, it is not at all a counter filed on behalf of the 2nd respondent and that in the first page of that counter affidavit, it is termed and stated as COUNTER AFFIDAVIT*

FILED BY RESPONDENT No.2, but the counter affidavit is filed by one B.Veerender Varma, who is a third party to the Writ Petition and he has no locus standi to file the counter. It is also stated that further there is no averment stating that the 2nd respondent has authorized him to file the said counter and in the absence of the same, a third party cannot file a counter, who is no way concerned with the Writ Petition and as such the contents of the counter affidavit cannot be taken into consideration. It is also stated that donating certain lands, as stated that in the writ affidavit, is on record and is to the everybody's knowledge in the local area and the so-called Deputy Commissioner sitting at Endowments Head Office, is not empowered to say about the same. It is further stated that the contention that the Inspector of Police reported that there are no criminal cases pending against 6th respondent is false since this petitioner and the 2nd petitioner have sent a representation dt.9-4-2007 along with the copies of Judgments and F.I.R.No.34/2007 on the file of Irala Police Station to the Hon'ble Minister for Endowments, and respondents 1 to 3 in this Writ Petition by registered post with acknowledgement due and the said representation was received by the said authorities and had taken no action, but inspite of the said

representation, they have appointed 6th respondent as Trust Board Member and that therefore the stage-managed Police report obtained after submitting the above representation, is not valid and the appointment of the 6th respondent cannot be made on the said report. In fact, in para 3 of the counter affidavit itself it is stated that the petitioners have not submitted certified copies of the Judgments of the Criminal Courts to the Assistant Commissioner. It is also averred that the 3rd respondent herein in his proceedings Rc.No.B3/1320/2007-Admn, dt.1-6-2007 requested to furnish the copies of Judgment of various Courts and FIR No.34/2007 which they have already submitted to him. However, in pursuance of the above said letter, the petitioner again submitted another set of copies on 5-6-2007 by attesting the copies by a Notary and obtained acknowledgement for the same and that therefore the allegation that the 1st respondent issued the impugned G.O., constituting the Board of Trustees after obtaining information and report from the concerned is not correct. Further it is stated that the competent person to consider the representation and to take action in accordance with law is the 1st respondent, but the 1st respondent has not filed any counter in this regard and a third party has no right to say anything about the

constitution of the Trust Board by the 1st respondent. It is also further stated that the allegation that the 6th respondent assisted one B.Jayachandra Reddy in abducting a girl for performing her marriage and other facts which were discussed in the Judgments of the trial Court and appellate Courts were interpreted to suit the convenience of the 6th respondent by the deponent of this counter and that further, certain facts with regard to criminal cases stated against the 6th respondent were not answered by the 6th respondent in his counter, but on his behalf the deponent of this counter is saying so many things for the reasons best known to him. It is also stated that at para 4, 4th line from bottom of page No.2 of the counter, "though there is no direct allegation against the 6th respondent, he was also convicted along with others for the offence under Section 366 I.P.C." and this statement amounts to contempt of Court, though the criminal Court convicted the 6th respondent after considering all the aspects of the case and the same was confirmed by the District Court in Appeal, High Court in revision and the Apex Court in S.L.P. Further it is stated that the offence involves moral turpitude and the mere statement of the deponent of the counter affidavit that

there is no moral turpitude against the 6th respondent is incorrect and he cannot be a judge to consider and decide the Judgments delivered by the trial Court to Apex Court. It is further stated that if an offence of kidnapping, abducting or inducing a woman to compel her marriage, does not involve moral turpitude, no other crime will come under moral turpitude and the deponent of the counter affidavit has filed the counter to help the 6th respondent in his own way and this itself shows the influence of the 6th respondent. Further it is stated that as stated earlier, the deponent of this counter tried to give such a colour that though the 6th respondent was convicted by the appropriate Court, he cannot be penalized again and if that is the case, why the legislature is continuing Section 19(3) of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 and without removing the said provision, the person working as Deputy Commissioner cannot plead for 6th respondent contrary to the provisions of the statute and this shows the commitment of the Endowments Department to appoint the 6th respondent as Trustee of the Board to the 4th respondent Temple at the cost of devotees and ignoring and bypassing the provisions of law. It is also stated that

the 3rd respondent's report dt.24-6-2007 was not furnished to these petitioners and as stated earlier though they have furnished all the copies, the authorities managed to send reports that there are no cases against the 6th respondent. Further it is averred in the reply affidavit that it is for the Government to produce the records and state what made it to appoint the 6th respondent inspite of the representations of the 2nd petitioner and this 17th petitioner and the deponent of the counter has no right whatsoever to say about the correctness of the impugned order. It is stated that further, in nutshell, the deponent admitted in the counter that the 6th respondent was convicted by a competent criminal Court and the same was confirmed by the appellate Courts on one hand and on the other he says that the 6th respondent was convicted though there is no direct allegation against him and this itself shows the determination, commitment, interest and favoritism of the officials to help the 6th respondent contrary to the provisions of the statute. It is also stated with regard to 4th respondent's counter affidavit, that the 4th respondent is a formal party since the 6th respondent got appointed as Trustee to it and to safeguard the 4th respondent's interest

and to follow the Rule of Law, these petitioners had filed this Writ Petition. It is also stated that strangely, the Executive Officer, who is in the rank of Regional Joint Commissioner has stated about the petitioners only and not stated anything about the 6th respondent and also stated that he is a native of Agarampalle village, Kanipakam Panchayat and he knows the 6th respondent personally right from his childhood, who is no other than his close friend and that in order to save his friend i.e., the 6th respondent, he exceeded his limits by saying something which is not connected with the Writ Petition and though the copies of the Judgment and FIR copies were filed along with the Writ Petition, the Executive Officer after going through the same, has filed his counter, but inspite of the material placed by the petitioners, he stated that he is not aware of the antecedents and this itself shows the love and affection of this Executive Officer towards the 6th respondent and also further he narrated the civil and criminal cases filed by some of the petitioners or against some of the petitioners. Further it is stated that with regard to the same, these petitioners have stated in para 7 of the writ affidavit that at the instance of the 6th respondent, the 5th respondent has foisted number of

false cases against some of the petitioners herein and others in order to terrorize them and made them silent. It is further stated that it is the habit of the officials, including the Executive Officer, to foist criminal cases against the persons, whoever questions the highhanded action or reports to higher authorities with regard to misdeeds and mismanagement of the Temple for their selfish gain. It is also stated that actually, the 4th respondent Temple was constructed by the Kanipakam villagers and neighbouring villagers by way of donations and other contributions as a local village Temple and that now it came to the hands of Endowments Department and whenever the petitioners or villagers find irregularities in the Temple, they were forced to report the same to the higher authorities and this Executive Officer without correcting the same, has no right to question the action of the petitioners. It is also averred that there are number of things to be stated against this Executive Officer, but since they are no way connected with this Writ Petition these petitioners reserve their right to take appropriate proceedings against him and also stated that he was suspended twice and reinstated later, and there are cases pending before Tribunal for Disciplinary Proceedings, Lokayukta and as such he has no right to say about the foisted cases against some of the

petitioners. It is also further stated that the Executive Officer, who is the deponent of the counter affidavit filed on behalf of the 4th respondent has not stated intentionally anything about the 6th respondent and not denied the averments stated in the Writ Petition including conviction of the 6th respondent and has not submitted the true facts about the 6th respondent in order to help him, since he is a close friend to him, and he stated that some of the petitioners are accused in the criminal cases and also they have filed civil cases, which are in fact stated by these petitioners in their Writ Petition and it has no bearing on this case. It is also averred that if the pendency of cases is the criteria, then the Executive Officer has no right to hold the post or file the counter since certain cases also are pending against him. It is also stated by the petitioners that their intention is that a person, who is disqualified under the Act No.30/1987, shall not be appointed in the interest of Temple and they are not claiming any post or power in the 4th respondent Temple and therefore, this counter is no use in deciding the matter. It is further averred that when this petitioner was Sarpanch of Kanipak Gram Panchayat, he had taken steps along with the local M.L.A. and Ubhayadars of the Temple for acquiring the land by way of negotiations,

Land Acquisition proceedings by convincing the local farmers in order to develop the 4th respondent Temple and with regard to donating the lands by some of the petitioners and Saaswatha Ubhayadars and it is a matter of record and the mere denial of the Executive Officer will not help to prove the same. With regard to the counter affidavit filed by 6th respondent, specific stand had been taken that the 1st respondent had to support in its action for issuing the impugned order by placing the records and filing counter affidavit, but the 1st respondent, who is the competent authority, and also the 2nd respondent, who is the highest authority in the Endowments Department, have not filed counters since they have committed mistake at the pressures of higher-ups in appointing the 6th respondent as Trustee of the Board contrary to the Act No.30/87 and the 5th respondent has also not filed his counter since he cannot defend and support his police report given in favour of 6th respondent, which is illegal and given deliberately suppressing the facts stated in the Writ Petition. With regard to paras 2 to 5 of the 6th respondent counter affidavit, it is stated that it is not correct to state that the petitioners have not come to the Court with clean hands. It is also stated that as regards

petitioners 1 and 3 are concerned, they have stated in para 6 of the Writ Affidavit that they were accused and suffered the conviction and sentence in the criminal case along with the 6th respondent and further they have stated that the offence involves moral turpitude in ground No.2 of the writ affidavit and also in the representation sent to the respondents 1 to 3 and as such it is not correct to state that they have not stated that the alleged offence is an offence resulting moral turpitude. It is further stated that though criminal cases were registered against 6th respondent, with the support of the 5th respondent, he was not arrested and the particulars were already given in the Writ Petition and as such the contention of the 6th respondent that no case is registered against him and the writ petitioners are trying to foist some false cases, are incorrect. It is also stated that the present Sarpanch of Kanipakam Gram Panchayat, who is a Scheduled Caste Woman, gave a complaint to the Irala P.S. and F.I.R.No.34/2007 dt.1-4-2007 was registered against the 6th respondent and others under Section 3(1)(x) SC & ST (POA) Act and Section 506 IPC and the same is pending and another case was registered against 6th respondent and 2 others on the file of Irala P.S. vide FIR No.64/2007 dt.3-7-2007 under Sections 436 and 326 IPC and under

Section 3(1)(x) SC & ST (POA) Act. Further it is stated that the police have of the taken any steps in arresting the 6th respondent, but at the same time the 5th respondent being a responsible Police Officer has issued a false certificate stating that there are no cases pending against the 6th respondent apart from not revealing the conviction suffered by the 6th respondent. It is stated that the contention that the petitioners have invoked the jurisdiction of this Court suppressing the fact that Section 28 of the Act provides a specific remedy is not correct. It is also stated that Section 19 deals with disqualification for appointment and Section 28 deals with suspension, removal or dismissal of Trustee, if he becomes subject to any disqualifications specified in Section 19. The 6th respondent without knowing the difference between Sections 19 and 28 commented about the above said fact and it is a question of law, which needs no reply on the face of it. With regard to paras 5 to 8 of the counter affidavit, it is averred that as stated earlier Section 28 has no application to this case and Sections 149, 153 and G.O.Ms.No.651 are also in no way connected with this case, since it relates to suspension, removal or dismissal of Trustee and procedure of hearing Appeals etc. and it is

not an alternative remedy as stated by the 6th respondent. It is also stated that there is no Appeal or alternative remedy in the statute against orders of the Government and the only remedy is to approach this Court under Article 226 of the Constitution of India, but the 6th respondent deliberately stated that the Writ Petition is a misuse of process of law and his intention is to approach the lower authorities against the order of Government, so that with the help of his political bosses, he can get an order in his favour, but the mechanism provided under the Act is not applicable to this case, since they have already submitted a detailed representation dt.9-4-2007 along with Judgments and copies of FIR to the respondents 1 to 3 and in fact after receiving the said representation, the 3rd respondent again requested the petitioners to furnish copies of Judgments and they have furnished the same and the said fact is a matter of record and they have filed necessary papers as annexures to the Writ Petition and they pray that the same may be read as part and parcel of this reply affidavit. Further it is stated that ignoring the said Judgments of trial Court and the Apex Court, the respondents issued the impugned order in favour of the 6th respondent at the cost of the Temple and its devotees, which is contrary to law. With regard to

paras 9 to 12 of the counter, it is also stated that the conviction under Section 366 IPC for kidnapping, abducting or inducing a woman to compel her marriage, involves moral turpitude and the particulars of the cases have been given in the Writ Affidavit itself and there is no room for presumption or assumption since the Judgments are very clear and the 6th respondent suffered the sentence and he cannot deny the same. Further it is stated that the statute has not provided any opportunity for the illegal actions of the respondents, except to approach this Court and it is the duty of the official respondents to enquire and appoint honest, sincere, clean and dedicated persons to the Trust Board. It is also averred that in this case, inspite of representations along with particulars, as stated earlier, were received by the respondents 1 to 3 and the 3rd respondent endorsed it also by issuing a proceeding and knowing all the facts, the 6th respondent was appointed as a Trustee. It is stated that with regard to reasonable opportunity when the matter is dealt with by an official of the Endowments Department or Government, the procedure is contemplated; and when the impugned order is questioned in this Writ Petition, the 6th respondent has no right or choice to advice the petitioners to choose a forum of his convenience and as such the Writ Petition

is maintainable and in fact when the case came up for admission on the first day, the Government Pleader took time for producing the record and also when it came up on 6-8-2007, the Government Pleader took time for filing counter affidavit and this Court admitted the Writ Petition and granted interim order and Sri S.Rama Moorthy Reddy, Advocate, appeared on behalf of the 6th respondent and in his presence interim order was granted for a limited time and was extended thereafter, and as such the 6th respondent was given an opportunity by this Court. It is also stated that the authority contemplated under Section 28(3) and the provisions quoted by the 6th respondent have no relevance to this case, and a person who got convicted under Section 366 of IPC has no right to plead that he is entitled to continue as a Trustee of a prestigious Hindu Religious Institution/Temple bypassing Section 19 of Act 30/87 and therefore, the order of this Court cannot be revoked and it is a fit case to be allowed. With regard to paras 13 to 16 of the counter affidavit, it is averred that as stated earlier, Section 28 will come into operation only if a person becomes subject to any disqualifications after his appointment, but in this case, the 6th respondent is disqualified for appointing as a Trustee under Section 19(3) of the Act and the same was brought to the notice of

the concerned authorities with sufficient material well in advance, but inspite of the same he was appointed by the Government for the reasons best known to it. The Judgments of the criminal Court, appellate Court, High Court and the Supreme Court are self-explanatory to say that the offence and conviction amounts to moral turpitude. Mere denial of the 6th respondent that he is not sentenced for an offence involving moral turpitude, will not change the Court verdicts against him. Further it is stated that if an offence of kidnapping, abducting or inducing a woman to compel her marriage does not involve moral turpitude, no other crime will come under moral turpitude and in such a case there is no meaning and value for Section 19(3) of the Act and law will not be changed to suit the convenience of the 6th respondent. Further it is averred that the in fact the 6th respondent's involvement was already decided by criminal Courts, and his conviction indicates the question of law with regard to the involvement of moral turpitude and as such he was involved in an offence under Section 366 of IPC which falls under moral turpitude. It is also averred that as per Law Lexicon, "Moral Turpitude" as generally been taken to mean to be a conduct contrary to justice, honesty, modesty or good morals and contrary to what a woman

owes to a fellow man or Society in general, and that it has never been held that gravity of punishment is to be considered in determining whether misconduct involves moral turpitude or not and also it is further averred that even if the words involving moral turpitude are held to be implied in conviction on criminal charge in proviso to Art.311(2), it is clear that if a member of the Police Force is guilty of having been found drunk at a public place or to have become habituated to liquor and if he is convicted by a criminal Court, then his conviction should be held as involving moral turpitude. Further it is averred that the 6th respondent cannot deny the offence he committed and the conviction suffered by him, and also he cannot say that the offence and conviction is not a conduct contrary to justice, honesty, modesty or good morals and contrary to what he owes to the victim or to Society in general and that as stated earlier, as long as Section 19(3) is in the statute, the 6th respondent is not qualified for any appointment under the Act. It is also further averred that it is a nominated post intended to manage the affairs of the religious institution/Temple with dedication and criminals or convicted persons have no place to occupy the office of Trustee under the Act and that one cannot act contrary to law or statute, and as such the 6th respondent cannot

be appointed and continued. It is also stated that since the writ petitioners have challenged the very appointment itself, the Writ Petition is maintainable and there is no alternative remedy. It is also stated that the 6th respondent has not denied the conviction awarded by the Courts for the offence which involves moral turpitude and the FIRs registered against him and there is no material for him to prove that he is not involved in the case, where he was convicted and his Appeal, Revision, S.L.P., were dismissed by the Courts. Further it is stated that the respondents had not denied that the 6th respondent is not involved and convicted in the said case and one way or the other, they had tried to boost the image of the 6th respondent in order to help him and continue him as Trustee and Chairman of the 4th respondent Temple bypassing the provisions of the statute. It is also stated that inspite of number of adjournments, the 1st respondent, who had issued the impugned order, had not filed counter affidavit and a third party without any authority had filed the counter affidavit on behalf of the 2nd respondent.

18. The 5th respondent also had not filed any counter affidavit.

19. However, it is needless to say that it appears, subsequent to the filing of the reply affidavit, the 1st respondent also had filed counter affidavit.

20. Section 19(1)(e) of the Act specifies that *a person shall be disqualified for being appointed as, or for being, trustee of any charitable or religious institution or endowment – if he has been sentenced by a Criminal Court for an offence involving moral turpitude, such sentence not having been reversed.*

21. Elaborate submissions were made in relation to the concept of moral turpitude and this expression not being defined by the Enactment, to attract the said disqualification, *a person (1) should have been sentenced by a Criminal Court, (2) offence must be involved in a moral turpitude, (3) sentence should not have been reversed.*

22. The meaning of the expression "*moral turpitude*" would often fall for consideration. In view of the fact that this expression is being used in different Enactments not being defined under the respective definition clauses. This Court may have look into definitions in the Dictionaries and may have to rely upon the precedents. It is needless to say that though the individuals may be affected in commission of crimes, crimes are against society predominantly, as per criminal jurisprudence. Crimes may be grave, crimes may be trivial, crimes may

be of varied forms, crimes against person, crimes against property, petty offences, economic offences, drug offences, forest offences, excise offences, offences which may seriously affect the society at large and the like. The expression *"moral turpitude"* may have to be understood as per the standards of an ordinary prudent man, whether a crime is moral or immoral in the context of the society, there may be cases involving grave punishment, but they may not fall under the expression "*moral turpitude"*. There may be cases where punishment is not grave but they may fall under the category involving "*moral turpitude"*. The difficulty is in drawing a dividing line in between the offences involving "*moral turpitude"* and offences not falling under this category. No hard and fast rule can be laid down in this regard. Such cases may have to be decided depending upon the facts of each given case.

23. In WIKIPEDIA, the free encyclopedia, *"moral turpitude"* is defined as *"Moral Turpitude is the gross disregarding of moral standards expected of a human being while doing some activity or crime. Eg. Raping in front of the parents."* The interpretation of *moral turpitude* also had been referred to and under the category *Crimes Committed Against Person, Family Relationship, and Sexual Morality* it was shown *Bigamy; Contributing to the delinquency of a minor; Gross indecency; Interest (if the result of an improper sexual relationship); Kidnapping; Lewdness; Manslaughter – Voluntary, Involuntary, where the statute requires proof of recklessness; Mayhem; Murder; Pandering: Prostituion; Rape (including "Statutory*

rape" by virtue of the victim's age); Sodomy.

24. In West's Legal Thesaurus Dictionary, the word 'Moral' is defined:

> *"Pertaining to conscience or to the general principles of right conduct (moral judgment), Ethical, religious, right-and-wrong. 2. adj. Demonstrating correct character or behavior (moral person). Honorable, aboveboard, principled, appropriate, proper, noble, conscientious, worth, upstanding, righteous, scrupulous, virtuous, chaste, right-minded, dutiful, incorruptible, praiseworthy, uncorrupt, wholesome, uplifting, ethical, virtuous, respectable, decent, square, trustworthy, pure, meritorious, correct, seemly, exemplary, commendable, innocent, responsible. See also honest, good (2), right. 3.n. A lesson or principle (the moral of the story). Homily, significance, point, teaching, proverb, adage, canon, precept, truism, epigram, saying, motto. See also maxim".*

Likewise in the said Dictionary, the word 'Turpitude' is defined:

> *"Inherent baseness, vileness, or depravity. See moral turpitude, corruption, violation, wrong (1), fault, debauchery, delinquency, ignominy, lapse (3)".*

25. Likewise in the Chambers Dictionary, the word 'Moral' is defined:

> *"Moral, adj of or relating to character or conduct considered as good or evil: ethical; adhering to or directed towards what is right: virtuous, esp in matters of sex; capable of knowing right and wrong; subject to moral law; having an effect on the mind or will; supported by evidence of reason or probability (opposed to demonstrative); (eg of a victory) real or effective, if not apparent; moralizing (Shakesp),- n (in pl) writings on ethics; the doctrine or practice of the duties of life; moral philosophy or ethics; principles and conduct, esp sexual; (in sing) the practical lesson that can be drawn from anything; an exposition of such lesson by way of conclusion; a symbol (Shakesp); (sometimes mor-al, after Germoral or Fr morale) morality; (mor-al, after Fr) confidence, morale (now rare); a certainty (slang, now esp Austr); an exact counterpart (archaic slang) – vt and vi (archaic) to moralize."*
>
> Turpitude is defined: *"n baseness; depravity; vileness. (L turpitudo, from turpis base)"*

26. In the K.J.Aiyar's Judicial Dictionary, 'Moral' is defined as hereunder:

> *"Concise Oxford Dictionary defines 'moral' – 'concerned with goodness or badness of character or disposition or with distinction between right and wrong … virtuous in general conduct… (Kuldeep Singh v State of Punjab, (1994) 3 Punj LR 468 at 474: AIR 1994 P & H*

242.

Likewise in the said Dictionary, the word 'Turpitude' is defined:

> *"The word 'turpitude' means 'inherent' wickedness. (Brij Kishore Shukla v M.P.S.R.T.Corporation, (1996) 2 Serv LR 406.*

27. In Judicial Dictionary by Justice L.P.Singh P.K.Majumdar, '*moral turpitude'* is defined:

> *"Act of killing a person is normally attributed to a feeling of hurt or revenge; an act of personal vendetta. Per se an act of murder will not come within the broad concept of 'moral turpitude' as interpreted by Courts. (Kuldeep Singh v State of Punjab, AIR 1994 P & H 242 at 247).*
>
> *The term 'moral turpitude' is rather vague one and it may have different meanings in different contexts. The term has generally been taken to mean to be a conduct contrary to justice, honesty, modesty or good morals and contrary to what a man owes to a fellowman or to society in general. It has never been held that gravity of punishment is to be considered in determining whether the misconduct involves moral turpitude or not. (Durga Singh v State of Punjab, AIR 1957 Punj,.97).*
>
> *In common parlance 'moral turpitude' means baseness of character.*
>
> *The term 'moral turpitude' is not only well understood but also stands defined by the provisions of laws and also by the decision of the*

law courts. It does not need any further interpretation. However, when the acts of prostitution, sexual offences and gambling are attributed or an assistance in committing these activities is alleged against a person, there is no doubt that such acts involve the moral turpitude. (Sindhu Education Society v Kacharu Jairam, (1995)1 Lab LJ 451 at 458 (Bom).

In order to come within the scope of the phrase 'moral turpitude', there must be an element of baseness and depravity in the act for which a particular individual has been punished. The act must be vile or harmful to society in general or contrary to accepted rules of right and duties between man and man. Mere violation of a particular statute cannot amount to the commission of an act involving moral turpitude. (Management of Tractor and Farm Equipments Ltd. V Presiding Officer, First Additional Labour Court, (1983)1 MLJ 41 at 47).

'Moral turpitude' is a phrase which can hardly be accurately defined. It can have various shades of meaning in the various sets of circumstances. Normally as this phrase is understood, it is used in law with reference to crimes which refer to conduct that is inherently base, vile or depraved and contrary to the accepted rules of morality whether it is or is not punishable as a crime. They do not refer to conduct which before it was made punishable as a crime was generally not regarded as wrong or corrupt. In this connection, reference may be made to 'Words and Phrases' Permanent Edition,

Volume 27, page 557. At the same page, there are quotations to the effect that carrying of concealed weapons is not an offence involving moral turpitude. (Chandgi Ram Thakur Dass v Election Tribunal, AIR 1965 Punj 433 at 434.)

The expression 'moral turpitude' is not defined anywhere. But it means any thing done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if disclose vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or to the society in general. If therefore the individual charged with a certain conduct owes duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be done to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man. (Bateswar Singh v Distt.Magistrate & Collector, AIR 1959 All 71 at 74)".

28. In Prem's Judicial Dictionary, *moral turpitude* is defined:

"The test which should ordinarily be applied and which should in most cases be sufficient for judging whether a certain offence does or does not involve moral turpitude appears to be 1)

*whether the act leading to a conviction was such as could shock the moral conscience of society in general, 2) whether the motive which led to the act was a base one and whether an account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society. Mangali v Chakki Lal 1963 All.527 (528), see 1959 All 71; 1957 Punj.M 97.ere negligence, error of judgment on the part of an Advocate will not amount to professional misconduct. Different considerations arise where the negligence of the Advocate is gross. In dealing with this aspect of the matter, it is of utmost importance to remember that the expression 'moral turpitude' or deliquency' is not to receive a narrow construction. Wherever conduct proved against an Advocate is contrary to honesty, or oppose to good 'morals, or is unethical, it may be safely held that it involves moral turpitude. In re 'P' an Advocate 1963 SC 1313 (1315.6.) The term 'moral turpitude' has deep roots in law. The presence of moral turpitude has been used as a test in variety of situations including legislation governing the disbarment of attorneys. Re Kirly 73 N.W.92, the revocation of medical licenses Fort v. rinkley, 112 S.W. 1084, and removal of government servants. Moral turpitude also has found judicial employment as criterion in disqualifying and impeaching witnesses (3 Wigmore, Evidence 3rd 540) in determining the measure of contribution between joint test feasers Fidelly * Cos Co. v*

Christenson 183 Minn. 182 (236) and in deciding whether certain language is slanderous. Baxter v Mohr, 76 N.Y.S. 982. Conspiracy to defraud the United states of Taxes on distilled spirits is a 'crime involving moral turpitude' within Section 19(a) of the Immigration Act of 1917, Jordan v De George 341, U.S.223. No case has been decided holding that the phrase 'moral turpitude' is vague. See Volpe v Smith, 289 U.S. 412 = 77 Led.1298. But the Supreme Court of U.S.A. in Winter v New York held an ancient statute unconstitutional for vagueness; 333 U.S,. 507 =92 L ed.840. There, a statute which employed vague terminology wholly jacking in common law background or interpretation, was aimed at limiting rights of free speech. The phrase 'crime involving moral turpitude' presents no greater uncertainty or difficulty than language found in many other statutes. The Sherman Act provides the most obvious example, "restraint of trade" as construed to mean "unreasonable or undue restraint of trade". Nash v U.S.229=U. S.373=57 L ed.1232. see the interpretation of 'connected with or related to the national defence' Gorin v U.S.312 U.S.19=85 L ed.488, or 'fair and open competition' Old Dearborn Co. v S.D.Corp. 299 U.S.183 or 'reasonable variation should be permitted' U.S. v S.G. 7 E.Co 287 U.S. 77 or 'Political purpose' U.S. v War 3 bach, 280 U.S. 396. While the term 'moral turpitude' has never been clearly or certainly defined, obviously because it refers, not to legal standards, but rather to those changing moral standards of

conduct which society has set up for itself through the centuries Manzella v Zimmerman, 71 F.Supp.534, the authorities are nevertheless in agreement meant that the concept of a crime involving moral turpitude connotes something other than 'illegal' or 'criminal' and implies 'an act of baseness, vileness, or, depravity in the private and social duties which a man owes to his fellow men, or to a society in general, contrary to the accepted and customary rule of right and duty between man and man" Ng Sui Wing v U.S.46 F 2d.755. Moral turpitude means baseness. It is more than the civic deficiency manifested by breaking a known law. It is serious delinquency, measured by the general moral standards of the time and the country, of a sort or nature that would be regarded as such, independently of there being any law against it. Skrmatta v Coykendall, 16 F.2d 783, 22 F.2d 120. Serious sexual crimes such as rape involve moral turpitude. Bigamy is a crime involving moral turpitude. Rosen v Williams, 232 U.S.722 =58 L ed. 814. So is rape or attempt to rape or embezzlement or theft of property. It cannot be denied that the term 'moral turpitude' is somewhat vague. Jordan v De George, 341 U.S.341 U.S.97, 325 U.S.91, 269 U.S.385 (391). The expression 'moral turpitude' has been defined in Webster's Dictionary as 'quality of crime involving grave infringement of the moral sentiment of the community'. The term 'turpitude' has been defined as meaning 'inherent baseness or vileness of principle'. In Ramnatha

Iyer Law Lexicon moral turpitude has been defined as 'anything done contrary to justice, honesty, principle of good morals. An act of baseness, vileness or depravity in the private or social duties which a man owes to his fellow-men or to society in general, contrary to accepted customary rule of right and duty between a man and a man'. In a State where prohibition law is in force, the conviction of a person on a charge of being found drunk is an offence, involving moral turpitude. He can be rightly dismissed. Punjab National Bank Ltd., v Megh Singh Chowkidar (1927) II L.L.J. 290, Kailash Chand Khanna v Punjab National Bank Ltd. 1953 II L.L.J.43. A crime in which fraud is an ingredient involves moral turpitude. Jordan v DeGeorge 341 U.S.223=95 L ed.886, 289 U.S.422. The expression 'moral turpitude' is not defined any where. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or to the society in general. If therefore the individual charged with a certain conduct or to the society in general, to act in a specific manner or ot to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted

customary rule and duty between man and man. Baleshwar Singh v Dist. Magistrate & Collector 1959 All.71. It means anything done contrary to justice, honesty, modesty and good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private or social duty which a person owes to his fellow-men or to the society in general. 44 All.352 44 All.352; 1922 All.140."

29. ***IN RE 'P' AN ADVOCATE*** [3]**,** the Apex Court observed in para 7 as hereunder:-

"It is true that mere negligence or error of judgment on the part of the Advocate would not amount to professional misconduct. Error of judgment cannot be completely eliminated in all human affairs and mere negligence may not necessarily show that the Advocate who was guilty of it can be charged with misconduct, vide In re A Vakil, ILR 49 Mad 523: (AIR 1926 Mad 568) and in the matter of an Advocate of Agra ILR (1940) All 386: (AIR 1940 All 289 (SB)). But different considerations arise where the negligence of the Advocate is gross. It may be that before condemning an Advocate for misconduct, courts are inclined to examine the question as to whether such gross negligence involves moral turpitude or delinquency. In dealing with this aspect of the matter, however, it

is of utmost importance to remember that the expression "moral turpitude or delinquency" is not to receive a narrow construction. Wherever conduct proved against an Advocate is contrary to honesty, or opposed to good morals, or is unethical, it may be safely held that it involves moral turpitude. A wilful and callous disregard for the interests of the client may, in a proper case, be characterised as conduct unbefitting an Advocate. In dealing with matters of professional propriety, we cannot ignore the fact that the profession of law is an honourable profession and it occupies a place of pride in the liberal professions of the country. Any conduct which makes a persons unworthy to belong to the noble fraternity of lawyers or makes an advocate unfit to be entrusted with the responsible task of looking after the interests of the litigant, must be regarded as conduct involving moral turpitude. The Advocates-on-Record like the other members of the Bar are Officers of the Court and the purity of the administration of justice depends as much on the integrity of the Judges as on the honesty of the Bar. That is why dealing with the question as to whether an Advocate has rendered himself unfit to belong to the brotherhood at the Bar, the expression "moral turpitude or delinquency" is not to be construed in an unduly narrow and restricted sense."

30. In ***CALCUTTA DOCK LABOUR BOARD AND OTHERS V JAFFAR IMAM AND OTHERS***[4] it was held that *preventive detention is not a conviction by a criminal*

court.

31. ***CHANDGI RAM THAKAR DASS v ELECTION TRIBUNAL AND ASSTT. DEVELOPMENT COMMISSIONER FOR PANCHAYAT ELECTIONS, DELHI AND OTHERS***[5] the learned Judge of Punjab High Court observed at paras 4 and 5:

> *"The short question that I have to consider is whether the possession of an unlicensed fire arm, which is an offence under Section 19(f), is an offence which involves moral turpitude. 'Moral turpitude' is a phrase which can hardly be accurately defined. It can have various shades of meaning in the various sets of circumstances. Normally as this phrase is understood, it is used in law with reference to crimes which refer to conduct that is inherently base, vile or depraved and contrary to the accepted rules of morality whether it is or is not punishable as a crime. They do not refer to conduct which before it was made punishable as a crime was generally not regarded as wrong or corrupt. In this connection, reference may be made to 'Words and Phrases' Permanent Edition, Volume 27, page 557. At the same page, there are quotations to the effect that carrying of concealed weapons is not an offence involving moral turpitude. In Baleshwar Singh v District Magistrate and Collector, Banaras AIR 1959 All 71, J.K.Tandon, J, while dealing with this expression held:-*
>
> *"The expression 'moral turpitude' is not defined anywhere. But it means anything done contrary*

to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general".

In this case, the learned Judge was dealing with the case of a prosecution under section 182 of the Indian Penal Code and it was held that the conviction of a person under this provision would amount to 'moral turpitude'. No case has been brought to my notice where a conviction under section 19(f) has been held to amount to moral turpitude. In the present case, there is no allegation that the antecedents of the petitioner are such that he is engaged in some nefarious activities for the purpose of which he carries the fire-arm, very often, people keep fire-arms for their personal safety and some times, they resort to keeping fire-arms without license when they feel that their status in society is not such as would enable them to get a license from the authorities. It is a matter of common knowledge that during the British period, the license for a revolver was very rarely granted to a citizen, and it may be that while possessing the unlicensed fire-arm, the petitioner may have been influenced by this consideration. I am, therefore, unable to hold that in the circumstances of this case, the possession of an unlicensed revolver, in any

manner, amounts to moral turpitude."

32. I n ***S.KARUPPAIAH v THE INSPECTOR OF PANCHAYAT AND COLLECTOR OF RAMANATHAPURAM***[6] it was observed that to fall under *"moral turpitude"* offence to be one in which the person had displayed lack of morals.

32. In ***TAMIZ MUZHAGAN v RDO***[7] it was observed that *the gravity of punishment need not be considered in this context.*

33. In ***B.NAGABHUSHANAM***[8] the Division Bench of this court observed that *it is again argued that convictions under the Police Act, or for that matter, under any Act other than the Penal Code, are not convictions on a criminal charge. This contention is based on an untenable ground, namely, that while the Penal Code is the law of the land, the other Acts which prescribed punishment are not so. We fail to understand the significance of the argument because a conviction is nonetheless a conviction and sentence is nonetheless a sentence either of fine or imprisonment, whether under the Penal Code or under any other Act which is equally the law of the land. If a sentence of fine or imprisonment is not a conviction on a criminal charge, then we fail to understand what other conviction it can be. Certainly it*

cannot be a civil conviction. We find it difficult to comprehend this proposition. Whenever there is a judgment involving penal consequences such as fine or imprisonment, it is a criminal conviction, as there can hardly be any doubt that these are offences against the State. The learned Advocate argues that if this interpretation is given, then every person convicted of even a minor offence, nuisance or cycling offence or motoring offence not involving moral turpitude will be liable to be dismissed without an opportunity being given. That its consequence might be so we are at the present moment not called upon to judge because in this case from the facts themselves it is abundantly clear that the conviction involves moral turpitude. To complain that he has not been given an opportunity at the time of the enquiry is devoid of substance because once he has admitted the facts stated in the charge against him, there is nothing more to explain. The proviso (a) is an exception to the safeguard afforded in clause (2) of Article 311 that an opportunity should be given. Even if he is given an opportunity to explain, the authority cannot ignore the conviction or pass any comments thereon. That is the reason why the framers of the Constitution by a proviso took away his right of reasonable opportunity because that opportunity he would have had at the time of

his criminal trial or prosecution.

34. The concept of moral delinquency had been considered in ***M.MANI v A.SELLAMUTHU, ARIYALOOR TOWN PANCHAYAT, ARIYALOOR AND ANOTHER***[9] and ***SORNAM alias EASWARAMURTHY v THE DISTRICT MUNSIF AND ELECTION TRIBUNAL, AMBASAMUDRAM***[10].

35. In ***RISAL SINGH v CHANDGI RAM AND OTHERS***[11] the Division Bench held:

> *"The learned counsel for the appellant was unable to cite any direct authority for the proposition that conviction for an offence under Sec.19(f) of the Indian Arms Act should be taken to amount to moral turpitude within the meaning of the statutory provisions, but he referred to a number of decisions in which there was some discussion of the connotation of the term 'moral turpitude'. In Baleshwar Singh v District Magistrate and Collector, Banaras, AIR 1959 All 71, which has been referred to by the learned Single Judge also, J.K.Tandon, J., observed—*
>
> *"The expression 'moral turpitude' is not defined anywhere but it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of characster or disposition of the person charged with the particular conduct".*
>
> *The learned Judge was dealing with the case of conviction under S.182, IPC., for making a*

false report and in holding that conviction for such an offence involved moral turpitude he relied on an earlier decision of the Allahabad High Court reported as Sita Ram v District Magistrate, Pilibhit, 1957 All LJ 383. While he held that every false statement made by a person may not be 'moral turpitude', it was observed that it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to his society in general. These observations were considered by another learned Judge of the Allahabad High Court, A.P. Srivastava, J., in Mangali v Chakki Lal, AIR 1963 All 527, on which also the learned counsel for the appellant relied. A.P.Srivastava, J. was of the opoinion that some of the observations made by J.K.Tandon, J. had been too widely stated and, if followed literally, may make every act punishable in law an offence involving moral turpitude, which of course, could not have been the intention of the Legislature otherwise the qualification 'involving moral turpitude' would not have been used by the Legislature and it would have merely disqualified every person who had been convicted of any offence. In the view of A.P.Srivastava, J, the tests, which should ordinarily be applied for judging whether a certain offence did or did not involve moral turpitude, are as follows:-

1) *"Whether the act leading to a conviction was such as could shock the moral conscience of society in general.*

2) Whether the motive which led to the act was a base one, and

3) Whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society"

The offence of which the respondent in the writ petition had been convicted in AIR 1963 All 527, was the possession of a very small quantity, viz., one tola of Bhang, for which the sentence imposed was a fine of Rs.10. In the particular district in which the Bhang was seized from the man the possession of Bhang was an offence under S.50 of the U.P.Excise Act, while in the district to which he belonged there was no prohibition against taking Bhang. The learned Judge held that the act did not show any depravity in the character of the respondent nor had the respondent done anything which was considered base or demeaning by society in general; so that the conviction did not involve any moral turpitude.

If the tests, which are laid down in Mangali's case, AIR 1963 All 527, by A.P.Srivastava, J., are kept in view, I do not see how it can fairly be said that the offence of which Chandgi Ram respondent had been convicted involved moral turpitude. The learned counsel for the appellant maintained that it was for Chandgi Ram to give an explanation of the circumstances in which the offence had been committed and in this connection he referred to a judgment of P.D.Sharma, J in Milkha Singh v. Haridial Singh, Civil Writ No.145 of 1965, dated 3.3.1965 (Punj). This is an unreported judgment, but there is a

brief reference to it in the short notes in (1965) 67 Pun LR (Note No.49 at P.25). It appears that the conviction in that case was for an offence under S.61 of the Punjab Excise, Act and the sentence imposed was two months' rigorous imprisonment, but the nature of the particular offence committed is not given, and so it is not possible to derive any help from that judgment.

On the facts of the case before us we are unable to find any error in the view of the learned Single Judge that the offence for which Chandgi Ram respondent was convicted implied no such depravity and wickedness of character or disposition which would involve any moral turpitude. As observed by the learned Single Judge, people keep fire-arms for their personal safety and sometimes they resort to keeping arms without a licence when they feel that their status in society is not such as would enable them to get a licence from the authorities. No doubt they commit a contravention of the law, but it cannot necessarily be postulated that this contravention involved moral depravity and illness of character.

36. In ***BALESHWAR SINGH v DISTRICT MAGISTRATE AND COLLECTOR, BANARAS AND OTHERS***[12] while dealing with elections under U.P.Panchayat Raj Act, 1947 and the offence under Section 182 of the IPC it was held:

"The expression 'moral turpitude' is not

defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals,. It implies deprivity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in genral, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man.

Judging the position in the back ground of the foregoing discussion. S.182(a) in declaring that giving of false information to a lpublic servant with the intention that the public servant may do or omit to do anything which he ought not to do or omit, if the true state of facts respecting such information were given to him or known to him, has enjoined a duty on persons to obstain from giving such information etc. to a public servant. A duty has been cast on individuals not to act in a certain manner and detract public servants from their normal course. This is a duty which every individual who is governed by the above law owes to the society whose servant every public servant obviously is. An individual's

conduct in giving false information to a public servant in the circumstances stated in S.182(a) too is therefore contrary to justice, honesty and good morals and shows depravity of character and wickedness.

Therefore an offence under S.182 IPC whether falling under cl.(a) or cl.(b) is an offence involving moral turpitude. Baijnath, who admittedly had been convicted for an offence under this section was therefore disqualified to be appointed as Nyaya Panch under S.5(a) of the Act. His appointment accordingly is invalid."

37. In ***KULDEEP SINGH AND OTHERS v STATEOF PUNJAB AND OTHERS***[13] the Division Bench observed that *act of killing a person is normally attributed to a feeling of hurt or revenge; an act of personal vendetta – Per se an act of murder will not come within the broad concept of 'moral turpitude' as interpreted by courts and even otherwise nomination papers of petitioners 5 and 10 are not rejected on this ground.*

38. In ***SAHIRAM v. RAJASTHAN STATE***[14] the Division Bench of Rajasthan High Court while dealing with offence of evasion of customs duty in the context of Section 11(g) of the Rajasthan Panchayat Act 1953 observed:

"Section 11 prescribes qualification of Panchas and under cl.(g) it is provided that any

person who has been convicted by a competent Court of an offence involving moral turpitude shall not be eligible. There is a proviso to this clause which lays down that any person may be declared eligible for election by a general or special order of the State Government in spite of a disqualification under this clause.

It is not in dispute that the applicant was convicted under the Customs Act of the former State of Bikaner and sentenced to fine for evasion of customs duty. What is, however, urged is that conviction for customs duty does not involve moral turpitude and, therefore, the applicant was not disqualified under clause (g) of S.11. We cannot accept this contention. Evaders of customs duty must be held to be guilty of an offence involving moral turpitude.

The returning officer was, therefore, right in rejecting the nomination of the applicant. It was then urged that the conviction took place in 1940 more than fifteen years ago and that under the circumstances, the returning officer could have ignored this conviction. Our attention in this connection is drawn to S.7, Representation of the People Act (43 of 1951) which provides that any person sentenced to imprisonment for two years or more is disqualified unless five years have elapsed since his release."

39. Strong reliance was placed on the decision in ***PAWAN KUMAR v. STATE OF HARYANA***[15] wherein the Apex Court at para 12 observed:

"Moral Turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity. The Government of Haryana while considering the question of rehabilitation of ex-convicts took a policy decision on 2-2-1973 (Annexure E in the Paper-book), accepting the recommendations of the Government of India, that ex-convicts who were convicted for offences involving moral turpitude should not however be taken in Government service. A list of offences which were considered involving moral turpitude was prepared for information and guidance in that connection. Significantly Section 294 is not found enlisted in the list of offences constituting moral turpitude. Later, on further consideration, the Government of Haryana on 17/26-3-1975 explained the policy decision of 2-2-1973 and decided to modify the earlier decision by streamlining determination of moral turpitude as follows:

".....The following terms should ordinarily be applied in judging whether a certain offence involves moral turpitude or not;

(1) whether the act leading to a conviction was such as could shock the moral conscience of Society in general.

(2) Whether the motive which led to the act was a base one.

(3) Whether on account of the act having been committed the perpetrator could be considered to be of a depraved

character or a person who was to be looked down upon the society.

Decision in each case will, however, depend on the circumstances of the case and the competent authority has to exercise its discretion while taking a decision in accordance with the above-mentioned principles. A list of offences which involve moral turpitude is enclosed for your information and guidance. This list, however, cannot be said to be exhaustive and there might be offences which are not inclined in it but which in certain situations and circumstances may involve moral turpitude."

Section 294 IPC still remains out of the list. Thus the conviction of the appellant under Section 294 IPC on its own would not involve moral turpitude depriving him of the opportunity to serve the state unless the facts and circumstances, which led to the conviction, met the requirements of the policy decision above-quoted."

40. Further reliance was placed on ***ALLAHABAD BANK AND ANOTHER v. DEEPAK KUMAR BHOLA***[16] wherein it was held that *what is an offence involving "moral turpitude" must depend upon the facts of each case. However, one of the most serious offences involving "moral turpitude" would be where a person employed in a banking company dealing with money of*

the general public, commits forgery and wrongfully withdraws money which he is not entitled to withdraw. It is pertinent to note that *BALESHWAR SINGH v. DISTT.MAGISTRATE AND COLLECTOR (AIR 1959 All.71)* was approved and *PAWAN KUMAR v. STATE OF HARYANA (1996) 4 SCC 17 = 1996 SCC (Cri) 583)* was relied on.

41. In the light of the Dictionary meanings referred to supra and also the decided cases by different High Courts and the Supreme Court specified above, it is needless to say that whether a particular offence would fall under the category of moral turpitude or not may have to be decided in the facts and circumstances of a particular given case applying the tests laid down by the courts referred to supra.

23. The proceedings Lr. In Rc.No.H3/13904/2007, addressed by Sri P.Sundara Kumar, IAS, Commissioner, Endowments Department, A.P., Hyderabad to the Principal Secretary to Government, Revenue (Endowments) Department, A.P., Secretariat Building, Hyderabad reads as hereunder:-

GOVERNMENT OF ANDHRA PRADESH

From:	*To*
Sri P.Sundara Kumar, I.A.S.,	*The Prinicipal*
Secretrary to Commissioner,	*Government*
Endowments Department,	*Revenue*

(Endowments) A.P., Hyderabad.
Department, A.P.,

Secretariat Building, Hyd.

Lr. In Rc.No.H3/13904/2007, Dated: 07-2007

Sir,

Sub:- Endowments Department – Sri Varasiddi Vinayaka Swamy Devasthanam, Kanipakam (v), Irala (m), Chittoor District – Constitution of Trust Board – Report submitted – Reg.

Ref:- 1) This office Rc.No.A2/46272/2006, dt.7-12-2006.

2) G.O.Rt.No.618, Revenue (Endts-II) department, dt.24-3-2007.

3) This office Rc.No.H3/13904/07, dt.25-4-2007.

4) Applications received from Sri Manipi Jagannadha Reddy and 10 (ten) others

5) Applications received from Sri S.Subbaiah, Kattapalli (v), Irala (m) Chittoor District.

6) Applications received from Sri C.A.P.Jaya Koteswara Reddy, Dharmskaram Road, Ameerpet, Hyderabad.

7) This office Rc.No.H3/13904/2007 dt.16-5-2007.

8) This office Rc.No.H3/13904/2007 dt.16-6-2007.

9) This office Rc.No.H3/13904/2007 dt.20-6-2007.

10) Lr.dt.9-4-2007 received from Sri G.Muna
Swamy Naidu, Kakarlavaripalli (v),
Kanipakam, Irala (m), Chittoor District.
11) Lr.dt.26-4-2007 received from Sri Solipeta
Ramchandra Reddy, Ex.M.P. and Bonthala
Chandra Reddy, Secretary, Stanika Samstata
Praja Prathinidula Sangam, RTC X Road,
Hyderabad.
12) This office Rc.No.H3/13904/2007 dt.11-5-2007.
13) Rc.No.B3/1264/2007-1, dt.24-6-2007 from the
Assistant Commissioner, Endowments
Department, Chittoor.
14) Rc.No.B3/1264/2007-2, dt.24-6-2007 from the
Assistant Commissioner, Endowments Department, Chittoor.
15) Rc.No.B/1149/2007, dt.27-6-2007 from the
Assistant Commissioner, Endowments Department, Secunderabad.

-: o0o :-

Kind attention is invited to the reference 1st cited, wherein Government were pleased to issue instructions to take necessary action for issuance of notification.

Accordingly, in the reference 2nd cited notification

was issued inviting applications from the interested persons for constitution of Trust Board to the subject Temple. A copy of the said notification was communicated to the Executive Officer of the Subject Temple, Assistant Commissioner, Endowments Department, Chittoor, Deputy Commissioner, Endowments Department, Kurnool and Regional Joint Commissioner, M.Z.-II, Endowments Department, Tirupathi with a request to place the same on the notice boards and other places as per provisions of the Act duly indicating therein that the applications in the prescribed Form-II should reach within 20 days from the date of issue of notice and submit affixture reports. Affixture reports were received from the Executive Officer of the Swamy Temple, Assistant Commissioner, Endowments Department, Chittoor, the Deputy Commissioner, Endowments Department, Kurnool and Regional Joint Commissioner, M.Z.-II, Endowments Department, Tirupathi.

In response to the notification the following 13 (Thirteen) applications were received in the reference 4th, 5th and 6th cited. All the applications (12) have been sent to the Assistant Commissioner, Endowments Department, Chittoor in the reference 7th and 8th cited and (1) one application has been sent to the Assistant Commissioner, Endowments Department, Secunderabad, to verify the antecedents of the applicants and submit the antecedent verification report.

The Assistant Commissioner, Endowments Department, Chittoor, through his letter in the

reference 14th cited has reported that he has enquired into the antecedents of all Twelve (12) applications.

The Assistant Commissioner, Endowments Department, Secunderabad through his letter in the reference 15th cited has submitted his report enquiring into the antecedents of the (1) one applicant.

1.	*Sri Manipi Jagannadha Reddy, S/o.Ramakrishna Reddy*	*O.C.*
2.	*Sri Challagundla Ramurthy Naidu, S/o. Lingam Naidu*	*O.C.*
3.	*Sri Galla Satyanarayana, S/o.Ramanadaiah*	*O.C.*
4.	*Sri Nallapothula Praveen, S/o.Soundaraja Naidu*	*O.C.*
5.	*Sri Mannavara Sreedevi, W/o.N.R.Jayadeva Naidu*	*O.C.*
6.	*Sri Laxmaiah Srihari, S/o. Lakshmaiah*	*O.C.*
7	*Sri Poojari Gangulaiah, S/o.P.Abbai*	*S.C.*
8.	*Sri Velkuru Muniratnam Reddy, S/o. Rami Reddy*	*O.C.*
9.	*Smt.R.Lakshmi, W/o.Ekambara Setty*	*B.C.*
10.	*Sri Laxmi Devi, S/o.Siva Kumar*	*O.C.*
11.	*Sri Kasuchetty, Venkateswara Reddy*	*B.C.*
12.	*Sri Sangettha Subbaiah, S/o. Chinnaiah*	*S.C.*

13.	Sri CAP Jaya Koteswara Reddy, S/o.P.Changal Reddy	O.C.

An allegation petition against Sri M.Jagannadha Reddy, S/o.Ramakrishna Reddy was received in the references 10th, 11th cited. The allegations petitions were sent to the Assistant Commissioner, Endowments Department, Chittoor in the reference 12th cited with a request to enquire into the matter and submit report.

The Assistant Commissioner, Endowments Department, Chittoor in his report in the reference 13th cited stated that there are no criminal cases pending against Sri M.Jagannadha Reddy and that he is not involved in any criminal cases. Further that as per the opinion of the Government Pleader, Chittoor, without verifying authenticated copies it is not possible to decide the disqualifications under Section 19 of the Act 30/87 and that as per the records submitted by the petitioner all the Xerox copies are relating to the year 1955 and it is not possible to say that Sri M.Jagannadha Reddy is disqualified.

Thirteen applications have been received out of which (2) two applications were received in the references 6th and 7th cited after the prescribed period of 20 days.

Original (13) thirteen applications received in the references, 4th, 5th and 6th cited and copies of the Assistant Commissioner, Chittoor in the references 13th and 14th cited and copy of the report of the Assistant Commissioner, Endowments Department,

Secunderabad in the reference 15th cited are herewith submitted for favour of kind perusal.

As per the Section 15 (1)(a) of the Act 30/87, Government are the competent authority for constitution of Trust Board to the subject Temple consisting of nine (9) persons as the annual income exceeded Rs.10.00 lakhs.

In view of the above, Government may be pleased to take necessary action for constitution of a Non-hereditary Trust Board to Sri Varasiddi Vinayaka Swamy Devasthanam, Kanipakam, Irala (m), Chittoor District and communicated orders at an early date.

(With the approval of the Commissioner)

Yours faithfully,
Sd/-
(JYOTHI KURAKULA)
Deputy Commissioner (A)

24. On the strength of the same, certain submissions were made that the allegations made against 6th respondent also had been looked into and in the light of the report of the Assistant Commissioner and also the opinion expressed by the learned Government Pleader, Chittoor, the decision had been taken. The references made in the said proceedings being self-explanatory, the same need not be repeated. The applications of the individuals, the antecedents report of the Assistant Commissioner, Endowments Department, the report of the Inspector of Police, the Xerox copies of the relevant

Judgments, also are available in the records produced by the learned Government Pleader for Endowments apart from G.O.Rt.No.1515, dt.16-7-2007, which is the impugned G.O. In the proceedings Rc.No.B3/1264/2007-1 Adm. Dated 24-6-2007, addressed by the Assistant Commissioner, Endowments Department, Chittoor, to the Commissioner, Endowments Department, Hyderabad, the relevant portion reads as hereunder:-

GOVERNMENT OFANDHRA PRADESH

From: *To*

Sri D.Subba Rao *The Commissioner,*

Assistant Commissioner, *Endowments Department,*

Endowments Department, *Hyderabad*

Chittoor.

Rc.No.B3/1264/2007-1 Adm, dated 24-6-2007

Sir,

Sub:- Endowments Department – Appointment of Non-

Hereditary Trust Board to Sri Swayambhu Varasiddi Vinayaka Swamy Devasthanam, Kanipaka (v), Irala (m) Chittoor District – Applications sent – Antecedents Verification Report called for – Report submitted.

Ref: 1) G.O.Rt.No.618, dt.24-3-2007 from the Rvenue

(Endowments.II) department, Government of A.P.

2) Notice in Rc.No.H3/13904/2007, dated 25-4-2007

from the Commissioner, Endowments Department, Hyderabad.

3) Memo in Rc.No.H3/13904/2007, dated 11-5-2007
from the Commissioner, Endowments Department, Hyderabad.
4) Memo in Rc.No.H3/13904/2007, dated 16-5-2007
from the Commissioner, Endowments Department, Hyderabad.
5) Memo in Rc.No.H3/13904/2007, dated 16-6-2007
from the Commissioner, Endowments Department, Hyderabad.

-: o0o :-

I submit that the Commissioner, Endowments Department, Hyderabad was pleased to issue Notification in the reference 2nd cited inviting, applications from the interested persons for constitution of Non-Hereditary Trust Board to Sri Swayambhu Varasiddi Vinayaka Swamy Devasthanam, Kanipaka (v), Irala (m), Chittoor District.

Further in the reference 4th cited the Commissioner, Endowments Department, Hyderabad has sent the applications for the Trusteeship of the subject Temple and requested to verify the antecedents of the applicants as per the provisions laid down U/s.18 & 19 of the Act 30/87 and submit detailed report.

In this connection, I submit that I had been to Kanipakam on 24-6-2007 and enquired into the antecedents of applicants who have applied for the Trusteeship of the subject Temple. I submit my report as follows:

1. Sri Manipi Jagannadha Reddy,

S/o.M.Ramakrishna Reddy

He is residing at Kanipakam. He belongs to Hindu Kapu Reddy community (O.C.) and is aged about 75 years. He has studied upto S.S.L.C. He is an agriculturist and getting annual income of Rs.1,00,000/- p.a. He is a devotee of the Temple and of God fearing nature. He is an Ubhaidar of Thappotsavam during the Brahmotsavam festival of the subject Temple.

Further I submit that the Commissioner, Endowments Department, Hyderabad in the reference 3rd cited has sent a copy of representation of Sri Bontala Chandra Reddy, Secretary Stanika Sanstala Praja Pratinidula Sangam, R.T.C. X Road, Hyderabad and requested to enquire into the matter and submit a detailed report for taking further action. Hence a separate report is submitted regarding the antecedents of Sri M.Jagannadha Reddy, applicant for the trusteeship of the subject Temple. A copy of the same is herewith enclosed for kind perusal.

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……..

……"

The report of the Inspector of Police, Pakala Circle, Chittoor District addressed to the Assistant Commissioner (FAC), Endowments Department, Chittoor, reads as hereunder:-

POLICE DEPARTMENT

From: *To*

The Inspector of Police *Smt. P.Kasthuri, M.A.,*
Pakala Circle *Assistant Commissioner (FAC)*
Chittoor District *Endowments Department,*
Chittoor.

Sir,

Sub:- Police Department – Details of cases pending against

M.Jagannadha Reddy, S/o. M.Ramakrishna Reddy of Kanipaka, Irala (m) – Information submitted – Regarding.

Ref:- Rc.No.B3/1826/2007 Admn. Dt.28-5-2007 of the

Assistant Commissioner of Endowments Department, Chittoor.

-: o0o :-

I submit that as per the reference cited above, I verified the records maintained at Irala P.S. and Puthalapattu P.S. regarding the involvement of Sri M.Jagannadha Reddy, S/o. M.Ramakrishna Reddy of Kanipakam village, Irala Mandal, Chittoor Dist. In a criminal cases and found he is not involved in any criminal cases and there is no cases pending against him.

This is for favour of information.

Yours faithfully,
Sd/-
Inspector of Police,
Pakala Cirlce

25. Several portions of the findings of the hierarchy

of the Criminal Courts had been pointed out and argued in elaboration. In view of the fact that the Judgment of the Apex Court already had been specified above, these findings need not be dealt with in elaboration. Section 18 of the Act deals with ***Qualification of Trusteeship.*** Section 19(1)(e) of the Act already had been referred to supra. Section 28 of the Act deals with ***suspension, removal or dismissal of trustee*** and the same reads as hereunder:-

> *(1) The authority competent to appoint a trustee may suspend, remove or dismiss a trustee if he –*
>
> *(a) fails to discharge the duties and perform the functions of a trustee in accordance with the provisions of this Act or the rules made thereunder.*
>
> *(b) disobeys any lawful orders issued under the provisions of this Act or the rules made thereunder, by the Government or the Commissioner or the Deputy Commissioner or the Assistant Commissioner;*
>
> *(c) refuses, fails or delays to handover the property and records in his possession relating to the institution or endowment to his successor or any other person authorized in this behalf;*
>
> *(d) commits any malfeasance or misfeasance or is guilty of breach of trust or misappropriation in respect of the properties of the institution or endowment;*
>
> *(e) becomes subject to any of the*

disqualifications specified in Section 19; or

(f) in the case of a religious institution or endowment, ceases to profess Hindu religion.

(2) Where it is proposed to take action under sub-section (1), the authority competent to appoint the trustee shall frame a charge against the trustee concerned and give him an opportunity of meeting such charge, or testing the evidence adduced against him and of adducing evidence in his favour; and the order of suspension, removal or dismissal shall state every charge framed against trustee, his explanation and the finding on such charge, together with the reasons thereof.

(3) Pending disposal of any charge framed against a trustee, the authority competent to appoint the trustee may suspend the trustee and appoint a fit person to discharge the duties and perform the functions of the trustee.

Strong reliance was placed on Section 28(1)(e) which specifies *the authority competent to appoint a trustee may suspend, remove or dismiss a trustee if he becomes subject to any of the disqualifications specified in Section 19.* In the light of the said provision, elaborate submissions were made that the writ petitioners cannot straight away approach this Court by invoking Article 226 of the Constitution of India. It is true that Section 28(1)(e) specifies that *the authority competent to appoint a trustee*

may suspend, remove or dismiss a trustee if he becomes subject to any of the disqualifications specified in Section 19. The relevant reports and the proceedings and also the decisions of the Apex Court already had been referred to above. It is pertinent to note that the facts are not in controversy between the parties. The ground that Xerox copies of Judgments alone had been produced and on the strength of the same, it cannot be said that the 6th respondent otherwise disqualified, be appointed as opined by the learned Government Pleader, in the considered opinion of this Court cannot be sustained for the reason that when relevant facts were brought to the notice of the competent authority, the authority is expected to take appropriate decision as ordained by the provisions of the statute. The stand taken that since there is long lapse of time, this disqualification even if it is to be said to be applicable, cannot be taken as a disqualification also cannot be accepted. The offence relating to which the 6th respondent was convicted and sentenced, even by the Apex Court with some modifications, would fall under the category of *moral turpitude*. It is also true that the rigor of the commission of the offence in a way had been watered down by the time. The matter was carried to its logical end to the Apex

Court, but the Apex Court also confirmed the conviction and modified the sentence as can be seen from the orders specified above. The question now would be when the rigor of an offence, whatever may be the nature of the offence, had been in a way watered down, can a person, figured as accused, escape the engulf of disqualification. Courts are expected not to legislate but to interpret the provisions of a statute. The contention put forth relating to the existence of alternative remedy and also the procedure under Section 28 of the Act need not detain this Court any longer for the reason that here is a case where the authorities from the inception while sending the reports had been conscious of the conviction and sentence suffered by the 6th respondent. It is not the case of the 6th respondent that an appointment was made duly taking into consideration this aspect and on the ground that this would not involve *moral turpitude.* There is absolutely no application of mind by the concerned authorities at any stage as reflected from the records produced before this Court. As already referred to supra, this Court had pointed out to the relevant proceedings and also had pointed out to the interim order which was made for a limited period and subsequent thereto extended until further orders.

26. On a careful appreciation of all the facts and circumstances and also after examining the whole scheme of the Act, the different provisions governing the field and also the Rules made there-under, this Court is of the considered opinion that since inasmuch as without proper application of mind to the relevant facts, the impugned G.O. had been issued so far as it relates to the 6th respondent is concerned, the same is hereby set aside for non-application of mind and the matter is remitted to the 1st respondent to take into consideration all these facts in the light of the views expressed by this Court specified supra and take a decision afresh in this regard in accordance with law.

27. Accordingly, the Writ Petition is allowed to the extent indicated above. No order as to costs.

Justice P.S.Narayana

November, 2007

L.R. Copy to be marked (YES / NO)

smr

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[1] (1996) 4 SCC 17

[2] (1997) 4 SCC 1

[3] AIR 1963 S.C., 1313

[4] AIR 1966 S.C., 282

[5] AIR 1965 Punjab 433

[6] 1965 (1) MLJ, 137

[7] 1956 (2) MLJ, 194

[8] 1965 (2) AWR 423

[9] 1966 (2) MLJ, 431
[10] 1964 (2) MLJ, 426
[11] AIR 1966 Punjab 393 (at Delhi)
[12] AIR 1959 Allahabad 71
[13] AIR 1994 Punjab & Haryana 242
[14] AIR 1957 Rajasthan 27
[15] 1996 (4) SCC 17
[16] 1997 (4) SCC 1